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April 29, 2008

VIA HAND DELIVERY

Mr. Brian Hancock,
Deputy Director,
Division of Child Behavioral Health Services
New Jersey Department of Children and Families
4th Floor, Capital Center
50 East State Street
Trenton, NJ 08625

Re: Proposed new rule N.J.A.C. 10:200, In-Community
Mental Health Rehabilitative Services for Children, Youth
and Young Adults
PRN 2007-341.

Dear Mr. Hancock:

Thank you for extending the comment period for the above captioned proposal. I am submitting this comment on behalf of the Division of Consumer Affairs (the Division) and the State Board of Marriage and Family Therapy Examiners and the Board of Social Work Examiners.

The new rule proposed by the Division of Child Behavioral Health Services (DCBHS) addresses intensive in-community mental health rehabilitative services (IIC) delivered face-to-face to children, youth and young adults in the home and/or in community-based settings. The Division, the State Board of Marriage and Family Therapy Examiners, and the Board of Social Work Examiners request that the proposal be amended on adoption to permit licensed social workers (LSW) and licensed associate counselors (LAC) to perform these services which the relevant enabling acts and regulations permit them to perform and which they are now performing.

Proposed section N.J.A.C. 10:200-2.4b provides that IIC services shall be delivered by a licensed clinical professional, who, within the scope of his or her practice, is authorized to provide mental health services. (emphasis added). All services shall be provided by clinicians with the appropriate licensure and/or

specialty certification in accordance with all State rules and statutes. The IIC services encompass a variety of mental health services that are within the scope of practice of licensees of a number of the boards in the Division. Indeed, licensees now perform these services, yet not all such licensees are "licensed clinical professionals" within the meaning of the proposed rule.

The proposal limits clinically licensed practitioners, authorized to deliver IIC services, to licensed psychiatrists; psychologists; advance practice nurses, mental health; licensed clinical social workers; or professionals licensed in accordance with the Board of Marriage and Family Therapy Examiners including, but not limited to, licensed marriage and family therapists; licensed professional counselors; clinical mental health counselors or rehabilitative counselors, although other practitioners licensed by boards in the Division now perform these services.

The Social Workers' Licensing Act (N.J.S.A. 45:15BB-1 et seq.) sanctions licensed social workers (LSW). Under regulations of the Board of Social Work Examiners, it is within the scope of practice of LSWs, and they are qualified, to perform clinical social work services in a home or community based settings. These clinical services are to be performed under the supervision of a licensed clinical social worker (N.J.A.C. 13:44G-3.2), but the supervision need not occur at the practice site. Supervision involves face-to-face contact between the LSW and the supervisor during which they review the LSW's cases in at least one hour per week of face-to-face clinical supervision.

Similarly, the Professional Counselor Licensing Act (N.J.S.A. 45:8B-34 et seq.) sanctions licensed associate counselors (LAC). Under regulations of the Professional Counselor Examiners Committee of the Board of Marriage and Family Therapy Examiners, it is within the scope of practice of a LAC, and they are qualified, to perform counseling services under the supervision of a licensed professional counselor, licensed clinical social worker, a licensed marriage and family therapist, or a licensed physician practicing in the field of psychiatry, among others (N.J.A.C. 13:34-10.3). Here too, supervision need not occur at the practice site. Supervision is an ongoing process in which the supervisor monitors the performance of the supervisee and provides regular documented, face-to-face consultation, guidance, and instruction with respect to the counseling skills and competencies of the supervisee which includes at least one hour per week of face-to-face supervision.

Neither the Professional Counselor Examiners Committee nor the Board of Social Work Examiners has received any complaint from the public, any of the agencies, or DCBHS about LACs or LSWs, respectively, who are presently performing in-community mental health rehabilitative services

The Economic Impact and Job Impact statements in the proposal fail to acknowledge that LSWs and LACs are presently performing in-community mental

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health rehabilitative services and fail to assess the rule's impact on them. Nor does the proposal acknowledge the economic impact on the providers who will be required to hire clinically licensed individuals to perform services now performed by LSWs and LACs, and consequently, who will have to pay the practitioners more.

The Division, the State Board of Marriage and Family Therapy Examiners, and the Board of Social Work Examiners request that the proposal be amended on adoption to permit LSWs and LACs to perform in-community mental health rehabilitative services.

We also request that DCBHS consider amending the proposal to permit clinical alcohol and drug counselors licensed under N.J.S.A. 45:2D-1 et seq. and N.J.A.C. 13:34C to perform in-community mental health rehabilitative services. We note that the June 9, 2004 Department of Human Services report, "A New Beginning: The Future of Child Welfare in New Jersey," states that

"Approximately one-third of substantiated child abuse and neglect cases involve a substance abuse problem in at least one caregiver. These are the cases we know about. Nationally, the prevalence rates of families involved with child welfare with substance abuse problems is anywhere from 60-80%."

Thank you for the opportunity to comment.

Sincerely,


Lawrence De Marzo,
Acting Director

State Board of Marriage and Family Therapy Examiners Laws

45:8B-1. Declaration relative to practice of marriage and family therapy

The practice of marriage and family therapy in the State of New Jersey is hereby declared to affect the public safety and welfare, and to be subject to regulation and control in the public interest in order to protect the public from the unprofessional, improper, unauthorized and unqualified practice of marriage and family therapy, and from unprofessional conduct by persons licensed to practice marriage and family therapy. This act shall be liberally construed to carry out these objects and purposes.

L.1968, c.401, s.1; amended 1995, c.366, s.1.

45:8B-2. Definitions

As used in this act, unless the context clearly requires otherwise and except as in this act expressly otherwise provided:

(a) "Licensed marriage and family therapist" means an individual to whom a license has been issued pursuant to the provisions of this act, which license is in force and not suspended or revoked as of the particular time in question.

(b) The "practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether in the general public or in organizations, either public or private, for a fee, monetary or otherwise. "Marriage and family therapy" is a specialized field of therapy which includes premarital counseling and therapy, pre- and post-divorce counseling and therapy, and family therapy. The practice of marriage and family therapy consists of the application of principles, methods and techniques of counseling and psychotherapy for the purpose of resolving psychological conflict, modifying perception and behavior, altering old attitudes and establishing new ones in the area of marriage and family life. In its concern with the antecedents of marriage, with the vicissitudes of marriage, and with the consequences of the failure of marriage, marriage and family therapy keeps in sight its objective of enabling clients to achieve the optimal adjustment consistent with their welfare as individuals, as members of a family, and as citizens in society.

(c) "Board" means the State Board of Marriage and Family Therapy Examiners acting as such under the provisions of this act.

(d) "Recognized educational institution" means any educational institution which grants the bachelor's, master's and doctor's degrees, or any one or more thereof, and which is recognized by the Commission on Higher Education or by any accrediting body acceptable to the State Board of Marriage and Family Therapy Examiners.

L.1968, c.401, s.2; amended 1995, c.366, s.2.

45:8B-2.1. Terms refer to "State Board of Marriage and Family Therapy Examiners," marriage and family therapist"

24. Whenever the term "State Board of Marriage Counselor Examiners" or "marriage counselor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to refer to the "State Board of Marriage and Family Therapy Examiners" and "marriage and family therapist," respectively.

L.1995, c.366, s.24.

45:8B-3. Recognition of educational institutions

No educational institution shall be denied recognition as a recognized educational institution solely because its program is not accredited by any professional organization of marriage and family therapists, and nothing in this act or in the administration of this act shall require the registration with the board of educational institutions of departments of sociology, psychology, social work, marriage and family life or any other specialty or doctoral programs in any of these professional fields.

L.1968, c.401, s.3; amended 1995, c.366, s.3.

45:8B-4. Practice of medicine and surgery not authorized by act

Nothing in this act shall authorize the practice of medicine and surgery by any person not licensed so to do pursuant to chapter 9 of Title 45 of the Revised Statutes.

L.1968, c. 401, s. 4, eff. Jan. 10, 1969.

45:8B-5. Licensure required for advertising, use of titles

Commencing January 1, 1969, except as provided in sections 6 and 8 of P.L.1968, c.401 (C.45:8B-6 and 8), a person who is not licensed under this act, shall not advertise the performance of marriage and family therapy services or represent himself to be a licensed practicing marriage and family therapist, use a title or description, including the following titles: marriage and family therapist, counselor, advisor or consultant; a family counselor, therapist, advisor or consultant; a family guidance counselor, therapist, advisor or consultant; a marriage guidance counselor, therapist, advisor or consultant; a family relations counselor, therapist, advisor or consultant; a marriage relations counselor, therapist, advisor or consultant; a marriage counselor, therapist, advisor or consultant; or any other name, style or description denoting that the person so engages in marriage and family therapy. Except as otherwise specifically provided in sections 6 and 8 of P.L.1968, c.401 (C.45:8B-6 and 8), only a person licensed under this act shall advertise the performance of marriage and family therapy or counseling services; use a title or description such as marriage and family therapist, counselor, advisor or consultant; a family guidance counselor, therapist, advisor, or consultant; a family relations counselor, therapist, advisor, or consultant; a marriage counselor, therapist, advisor or consultant; or any other name, style or description denoting that the person is a licensed marriage and family therapist; or licensed to practice marriage and family therapy. The use by a person

who is not licensed under this act of such terms, whether in titles or descriptions or otherwise, is not prohibited by this act except when in connection with the offer to practice or the practice of marriage and family therapy as defined in subsection (b) of section 2 of P.L.1968, c.401 (C.45:8B-2). Use of such terms in connection with professional activities other than the rendering of professional marriage and family therapy services to individuals for a fee, monetary or otherwise, shall not be construed as implying that a person is licensed under this act or as an offer to practice or as the practice of marriage and family therapy.

L.1968, c.401, s.5; amended 1995, c.366, s.4.

45:8B-6 Unlicensed persons, certain activities permitted.

An individual who is not a licensed practicing marriage and family therapist shall not be limited in his activities:

(a) As part of his duties as an employee of:

(1) an accredited academic institution, a federal, State, county or local governmental institution or agency, or a research facility while performing those duties for which he was employed by the institution, agency or facility;

(2) an organization which is nonprofit and which is, in the opinion of the board, a bona fide community agency, while performing those duties for which he was employed by the agency;

(3) a proprietary organization while performing those duties for which he was employed by the organization, provided his marriage and family therapy duties are under the direct supervision of a licensed practicing marriage and family therapist.

(b) As a student of marriage and family therapy, marriage and family therapy intern or person preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility recognized by the board, provided he is designated by such titles as "marriage and family therapy intern," or others, clearly indicating the training status.

(c) As a practicing marriage and family therapist for a period not to exceed 10 consecutive business days or 15 business days in any 90-day period, if he resides outside and his major practice is outside of the State of New Jersey, and gives the board a summary of his qualifications and a minimum of 10 days' written notice of his intention to practice in the State of New Jersey under this subsection, provided he (1) is certified or licensed in another state under requirements the board considers to be the equivalent of requirements for licensing under this act, or (2) resides in a state which does not certify or license marriage and family therapists and the board considers his professional qualifications to be the equivalent of requirements for licensing under this act; and is not adjudged and notified by the board that he is ineligible for licensing under this act.

(d) (Deleted by amendment, P.L.2005, c.49.)

(e) As a practicing marriage and family therapist for a period not exceeding three years under the supervision of a licensed practicing marriage and family therapist, or a person designated by the board as an eligible supervisor, if he has a temporary permit therefor which the board shall issue upon presentation by the applicant of satisfactory evidence of his completion of all the educational requirements as provided in subsection (a) of section 18 of P.L.1968, c.401 (C.45:8B-18) and filing and review of an application for a temporary permit under this act.

L.1968,c.401,s.6; amended 1995, c.366, s.5; 2005, c.49, s.1

45:8B-7 Persons not entitled to assert exceptions.

The exceptions specified in subsections (c) and (e) of section 6 of P.L.1968, c.401 (C.45:8B-6) shall not be available to any person who has been found by a court of this or any State of the United States to have been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purposes of this section, a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction. An action to determine whether any person asserting an exception under subsection (c) or (e) of section 6 of P.L.1968, c.401 (C.45:8B-6) has committed one or more of the acts listed in this section may be brought by the Attorney General on behalf of the board.

L.1968,c.401,s.7; amended 2005, c.49, s.2.

45:8B-8. Construction of act

Nothing in this act shall be construed to prevent a person from doing work of a marriage and family therapy nature, or advertising those services, when acting within the scope of the person's profession or occupation and doing work consistent with the person's training, including physicians, clinical social workers, psychologists, members of the clergy, nurses or any other profession licensed by the State, or students within accredited programs of these professions, if the person does not hold himself out to the public as possessing a license or certificate issued pursuant to this act.

L.1968,c.401,s.8; amended 1995,c.366,s.6.

45:8B-9 State Board of Marriage and Family Therapy Examiners created.

There is hereby created in the Division of Consumer Affairs of the Department of Law and Public Safety, the State Board of Marriage and Family Therapy Examiners, which shall consist of 12 members, who are residents of this State and citizens of the United States, six of whom shall be licensed practicing marriage and family therapists, one of whom shall be a licensed professional counselor currently serving on the Professional